

Advisory Commission on Portraits

Meeting Minutes
July 23, 2020
via Webex

Opening:

Co-chair Michelle Lanier called the meeting to order at approximately 1 p.m. on July 23, 2020.

Establishment of Quorum:

Commission Staff Amanda Bryan called roll, and a quorum was established. The following members were present:

Catherine Bishir
Rachel Blunk
Shelley Lucas Edwards
Hon. Robert N. Hunter
Michelle Lanier
Danny Moody
Dr. Elliot Palmer
Dr. Darin Waters
Hon. Willis Whichard
Dr. Lyneise Williams

The following members joined the meeting after the roll call:

Bree Newsome Bass
R.E. "Steve" Stevenson III

Introductory Remarks:

Co-chair Lanier began the meeting by recalling that the Commission's June 3, 2020 meeting began with a moment of silence honoring the life of George Floyd.

The Commission took a moment of silence to honor the lives of two women from the time of Thomas Ruffin: Bridget, an enslaved woman who was caned by Ruffin in Alamance County, and Lydia, the enslaved woman whose shooting was the event at the center of *State v. Mann*.

Approval of Minutes:

Justice Whichard suggested an amendment to the minutes of the June 3, 2020 meeting stating the number of votes needed for action by the Commission.

Justice Whichard moved to approve the minutes of the June 3, 2020 meeting with that amendment. Dr. Palmer seconded the motion. The motion passed with the following votes:

Catherine Bishir	Yes
Rachel Blunk	Yes
Shelley Lucas Edwards	Yes
Hon. Robert N. Hunter	Yes
Michelle Lanier	Yes
Danny Moody	Yes
Bree Newsome Bass	Yes
Dr. Elliot Palmer	Yes
R.E. "Steve" Stevenson III	Yes
Dr. Darin Waters	Yes
Hon. Willis Whichard	Yes
Dr. Lyneise Williams	Yes

Staff Report:

Commission Staff Amanda Bryan reported the following:

Ruffin Statue: The statue of Thomas Ruffin formerly housed at the Court of Appeals has been removed.

Orange County Ruffin Portrait: The Ruffin portrait that formerly hung in the Orange County courthouse is owned by Orange County and is currently in storage.

Solicitation of Public Comment: There are two options for soliciting public comment—a webform which would allow users to input their comments directly into provided field or a dedicated email address to which individuals could send their comments. Under either option, we can also accept comments via regular mail. Because of the way the data will be collected, staff recommends using a dedicated email address.

Judge Hunter asked whether the Orange County portrait is available for the Supreme Court’s use. Ms. Bryan responded that she had not inquired about that, but clarified that the portrait is owned by Orange County, so any decision on the portrait would be up to the Orange County Board of County Commissioners.

Commissioner Bass observed that the Orange County Board of County Commissioners has written to the Supreme Court to ask that the Ruffin portrait be removed from the Supreme Court courtroom, so we would be asking them to do something apparently contrary to their previous request.

Commissioner Bishir mentioned that the Orange County portrait is a copy of the Dialectic and Philanthropic Society's portrait.

Dr. Williams questioned whether there should be some other way to preserve a record of the people who have served as Chief Justice, because space for portraits in the courtroom will eventually run out. She suggested a plaque might serve that purpose. As an art historian, she is concerned about the conservation of the portraits and the way they are displayed. She also stated that she does not believe Ruffin deserves any portrait displayed in the courtroom because the contributions he is most known for are examples of cruelty and sadism, and advancing legal work and advocacy of that.

Justice Whichard suggested the Commission move on to discussion of the revisions proposed to the motion which passed in June with regard to recommendations to the Supreme Court.

Proposed Motion

Ms. Bryan reminded the Commission that at its previous meeting, Justice Whichard presented a motion¹ to recommend removal of the large Ruffin portrait from the Supreme Court courtroom, placement of a seal of the Court in the location where the Ruffin portrait currently hangs, and the procurement of a new portrait of Ruffin, consistent with the size of other portraits in the courtroom, to display within the courtroom. The motion passed conditionally, with the understanding that revisions would be made to include language addressing the funding of the replica portrait and a blanket condemnation of racism in the Court's past.

Justice Whichard presented a revised motion² containing the revisions contemplated by the Commission's discussion at its last meeting. The substantive revisions included: (1) the addition of another potential source for a new Ruffin portrait to hang in the courtroom—the Orange County portrait; (2) a provision that any replacement Ruffin portrait should not be paid for by public funds; and (3) a statement acknowledging and condemning racism in the Court's past.

Co-chair Lanier read the motion aloud, and Justice Whichard moved for its approval. The motion received numerous seconds, including from Commissioner Bishir and Dr. Palmer.

Co-chair Moody pointed out that he was not able to vote at the last meeting, and asked for inclusion in the record his disapproval of the motion passed at the June meeting.

¹ Attached as Addendum A

² Attached as Addendum B

Dr. Waters stated that he intends to vote “no” on the motion. He noted that he believes no portraits should hang in the courtroom because justice is intended to be blind, and the presence of portraits in the courtroom corrupts that intent.

Dr. Williams stated that she voted for the motion before the Commission because she is in favor of removing the Ruffin portrait, but she also believes no portrait should hang in that space. She reiterated that some method other than imagery should be employed to preserve the history of the Court. She stated that the blanket statement condemning racism in the revised motion is too general, and it would be preferable to condemn specific known acts of racism. The general statement is accurate, but obscuring.

At Dr. Palmer’s suggestion, Dr. Williams moved to rethink the passage regarding the historical past of the Court and to rethink how we approach the representation of the Supreme Court justices in the Court.

Commissioner Stevenson commented that he fully supports the revisions that were made based on the Commission’s decisions at the previous meeting, and he warned against mission creep because the idea of removing all portraits or completely removing any portraits of Ruffin is beyond the scope of the Commission’s charge.

Commissioner Moody stated that he has been deeply involved in the completion of the collection of portraits of former members of the Court. He stated that Ruffin’s record regarding legal opinions involving enslaved persons has been misrepresented, and that the majority of such opinions authored by Ruffin held in favor of the enslaved person. He said that the North Carolina court was the most liberal court in the South during Ruffin’s tenure. He stated that Ruffin’s opinions that resulted in the separation of slave families was an operation of the law as it existed at the time, not the individual actions of Ruffin. He noted that opinions are works of the Court, not individual justices—the opinions undergo revisions after review by the non-authoring justices. He noted that there has been little discussion of the Ruffin portrait since its original presentation to the Court, either by the justices who have served on the Court, by advocates appearing at the Court, or by the public, and that Ruffin has often been praised as a great justice. He said that the Commission has always been committed to removing the Ruffin portrait, and has ignored examples of other justices who have had racist beliefs and examples of Ruffin’s positive contributions. He stated that moving the portraits in the courtroom is likely to result in damage. He stated that, if the large Ruffin portrait is removed, he would prefer that no other portrait take its place. Finally, Commissioner Moody stated that, as a result of the Commission’s work, he has decided to order that his extensive collection of historical artifacts and research

related to the North Carolina Supreme Court should be burned upon his death. He also said that he has talked to former members of the Court and numerous taxpayers who are all against removal of the Ruffin portrait from the courtroom.

Commissioner Stevenson commented that the majority of the Commission has previously voted to replace the large Ruffin portrait with a seal of the Court, to hang a smaller portrait in the courtroom and to recommend to the court that portraits be limited to the average size of the other portraits in the courtroom.

Commissioner Newsome-Bass observed that the motion presented by Justice Whichard could serve as a template for the Commission's recommendation to the Court, and observed that it was in line with the Commission's discussion in June. She asked whether it is necessary for the Commission to be in agreement, or if alternative recommendations could be presented to the Court. She noted that she would be in support of either the current recommendation or a recommendation to remove all portraits from the courtroom. She stated that co-chair Moody's statement further supports the idea of removing all portraits, because of his observation that other individuals whose portraits hang in the courtroom shared similarly divisive views—the portraits represent a century of racist ideals and slavery apologia. She observed that arguments that Ruffin simply displayed the common views of his time is classic revisionist history and slavery apologia—many people were anti-slavery during that time. She stated that the fact that many of the leaders of the Court were slaveholders themselves is a demonstration of the way the Court has been an instrument to maintain white supremacy. She observed that the portrait of Ruffin was created and presented as a piece of Confederate symbology.

Dr. Waters observed that co-chair Moody's statement reinforces the complexity of the issue and the need for neutrality in the courtroom. He observed that although Ruffin may have sometimes found in favor of individual enslaved people in some cases, he consistently imposed on them a life of imprisonment through slavery.

Dr. Palmer says that he supported the motion in June because he believed it came from a position of compromise. He noted that the large portrait of Ruffin should make it difficult for advocates to feel comfortable arguing in the courtroom. He observed that his preference would be to remove all portraits if that is a possibility.

Judge Hunter observed that the motion in June had already passed, and that could constitute the recommendation to the Court and individuals could write letters to the Court noting their disagreements with this compromise recommendation.

Commissioner Stevenson commented that he believes that the Commission cannot judge the actions of the justices at the time of their service. They carry out the law in effect at the time. This conversation is beyond the scope of the Commission’s charge.

Commissioner Newsome-Bass observed that choosing to venerate Ruffin is a judgment of his legal actions and that ending the veneration of individual justices is the only true neutrality. She reiterated her question about whether the Commission must agree on a single recommendation.

Co-chair Lanier reminded the Commission that there is precedent for commissions to submit alternative recommendations. She then responded to co-chair Moody’s statements regarding Ruffin by noting that multiple things can be true simultaneously—Ruffin made positive contributions to North Carolina and was known as a great legal mind, but he also allowed his slaves to be tortured and he supported the Confederate States of America.

Commissioners Newsome-Bass and Williams agreed they would be willing to help further revising the language of the proposed motion.

The Commission voted on Dr. Williams’ motion to draft further amendments to the language of Justice Whichard’s proposed motion.

With the following votes, the motion did not pass:

Catherine Bishir	No
Rachel Blunk	Yes
Shelley Lucas Edwards	Yes
Hon. Robert N. Hunter	No
Michelle Lanier	Yes
Danny Moody	No
Bree Newsome Bass	Yes
Dr. Elliot Palmer	Yes
R.E. “Steve” Stevenson III	No
Dr. Darin Waters	Yes
Hon. Willis Whichard	No
Dr. Lyneise Williams	Yes

Justice Whichard noted that the majority of the Commission had already voted to approve a recommendation to replace the Ruffin portrait with a seal of the Court and to hang a smaller portrait of Ruffin in the courtroom. The remaining debate is only as to the revisions contemplated at the Commission’s previous meeting. Complete removal of all portraits has not been previously

contemplated, and is outside the Commission’s charge. With regard to the Ruffin portrait, he is in sympathy with getting a regular sized portrait there, but is against removing Ruffin from the collection because he is part of the history of the Court. He thinks we should know everything we can about the individuals in our history. The Court asked the Commission for help with a difficult question, and the Commission should come together on a reasonable compromise. He thinks the Commission’s report should be pointed and specific to help the Court, and not put the Court in a difficult position with regard to what kind of statement it adopts about its own past.

The Commission voted on the revisions to the previously passed motion as proposed by Justice Whichard. With the following votes, the motion did not pass:

Catherine Bishir	Yes
Rachel Blunk	No
Shelley Lucas Edwards	No
Hon. Robert N. Hunter	Yes
Michelle Lanier	No
Danny Moody	No
Bree Newsome Bass	No
Dr. Elliot Palmer	No
R.E. “Steve” Stevenson III	Yes
Dr. Darin Waters	No
Hon. Willis Whichard	Yes
Dr. Lyneise Williams	No

Co-chair Lanier thanked Justice Whichard for his work on the proposed recommendations and requested that all Commissioners send their thoughts regarding what recommendation they would be willing to support following the meeting.

Co-chair Lanier moved to request that Ms. Bryan present draft language to the Commission for soliciting public comment. Commissioner Bishir observed that it might be helpful to have a recommendation first for the public to comment on. Co-chair Lanier responded that she sees value in incorporating the public’s feedback into the recommendation.

Judge Hunter suggested that we solicit public comment on the motion that was previously passed.

Commissioner Stevenson seconded the motion.

The motion passed with the following votes:

Catherine Bishir	Yes
Rachel Blunk	Yes
Shelley Lucas Edwards	Yes
Hon. Robert N. Hunter	Yes
Michelle Lanier	Yes
Danny Moody	No
Bree Newsome Bass	Yes
Dr. Elliot Palmer	Yes
R.E. "Steve" Stevenson III	Yes
Dr. Darin Waters	No
Hon. Willis Whichard	Yes
Dr. Lyneise Williams	No

Adjournment:

Commissioner Bishir moved to adjourn the meeting. Multiple commissioners seconded. The motion passed with the following votes:

Catherine Bishir	Yes
Rachel Blunk	Yes
Shelley Lucas Edwards	Yes
Hon. Robert N. Hunter	Yes
Michelle Lanier	Yes
Bree Newsome Bass	Yes
Dr. Elliot Palmer	Yes
R.E. "Steve" Stevenson III	Yes
Dr. Darin Waters	Yes
Hon. Willis Whichard	Yes
Dr. Lyneise Williams	Yes

Co-chair Lanier adjourned the meeting at approximately 3:35 pm.

Proposed Motion
for
Portraits Commission

That the Portraits Commission recommend to the Supreme Court of North Carolina the following action regarding the portrait of Chief Justice Thomas Ruffin:

That the Court adopt a rule limiting the size of future portraits of former chief justices and associate justices of the Court to that of the largest of such portraits in the Court's current collection, excepting the portrait of Chief Justice Ruffin;

That the Court then commission the painting of a new portrait of Chief Justice Ruffin that conforms to the newly adopted rule relating to portrait size, said portrait to be prepared from the Ruffin portrait owned by the Dialectic and Philanthropic Societies, University of North Carolina at Chapel Hill, Chapel Hill, North Carolina; the Societies have indicated a willingness to loan their Ruffin portrait to the Court for a maximum period of five years for this purpose; the Commission recommends that the Court accept that offer;

That the new portrait, so commissioned, replace the outsized Ruffin portrait currently in the Justice Building Courtroom, and that the extant Ruffin portrait be placed in storage with the North Carolina Museum of History or the North Carolina Museum of Art, as the Court, in consultation with the appropriate officials of these state institutions, deems most appropriate or desirable;

That the placement of the new Ruffin portrait be moved one space to the left, when facing it, of the locale of the present Ruffin portrait, and the portraits of Ruffin's successor chief justices be moved one space to accommodate the new Ruffin portrait, thereby retaining the current chronological sequence of the portraits;

That a large replica of the seal of the Supreme Court be prepared and placed in the current locale of the Ruffin portrait; and

That the Court adopt a rule that henceforth the Court seal shall occupy said space, and no portrait of any former chief justice shall occupy said space to the immediate rear of the sitting chief justice's seat in the Courtroom.

Proposed Motion for Portraits Commission

That the Portraits Commission recommend to the Supreme Court of North Carolina the following action regarding the portrait of Chief Justice Thomas Ruffin:

That the Court adopt a rule limiting the size of future images of former chief justices and associate justices of the Court to that of the largest of such portraits in the Court's current collection, excepting the portrait of Chief Justice Ruffin;

That the Court then procure a portrait of Chief Justice Ruffin that conforms to the newly adopted rule relating to portrait size.

That the Court procure this portrait in one of two ways:

First, the Court could commission the painting of a new portrait of Chief Justice Ruffin that conforms to the newly adopted rule relating to portrait size, said portrait to be prepared from the Ruffin portrait owned by the Dialectic and Philanthropic Societies, University of North Carolina at Chapel Hill, Chapel Hill, North Carolina; the Societies have indicated a willingness to loan their Ruffin portrait to the Court for a maximum period of five years for this purpose; historically, private sources—e.g., the former member of the Court, his or her family or law clerks, bar groups, and the North Carolina Supreme Court Historical Society—have funded creation of the portraits in the Court collection; that tradition should continue, with private funding being sought for the portrait herein recommended;

Alternatively, the Court could pursue an agreement with the Orange County Board of County Commissioners by which the Board gifts or makes a similar five-year loan of its Ruffin portrait, which until recently hung in the Orange County Courthouse, to the Supreme Court for display in the Justice Building Courtroom;

That the new portrait replace the outsized Ruffin portrait currently in the Justice Building Courtroom, and that the extant Ruffin portrait be placed in storage with the North Carolina Museum of History or the North Carolina Museum of Art, as the Court, in consultation with the appropriate officials of these state institutions, deems most appropriate or desirable;

That the placement of the new Ruffin portrait be moved one space to the left, when facing it, of the locale of the present Ruffin portrait, and the portraits of Ruffin's successor chief justices be moved one space to accommodate the new Ruffin portrait, thereby retaining the current chronological sequence of the portraits;

That a large replica of the seal of the Supreme Court be prepared and placed in the current locale of the Ruffin portrait; and That the Court adopt a rule that henceforth the Court seal shall occupy said space, and no portrait of any former chief justice shall occupy said space to the immediate rear of the sitting chief justice's seat in the Courtroom.

Finally, the Commission commends to the Court its words in *State v. Cofield*, 320 N.C. 297, 302-03 (1987) (Exum, C.J.):

Article I, Section 26 [of the North Carolina Constitution, prohibiting racial discrimination in jury selection] does more than protect individuals from unequal treatment. The people of North Carolina have declared in this provision that they will not tolerate the corruption of their juries by racism . . . and similar forms of irrational prejudice. They have recognized that the judicial system of a democratic society must operate evenhandedly if it is to command the respect and support of those subject to its jurisdiction. It must also be perceived to operate evenhandedly. Racial discrimination in the selection of grand and petit jurors deprives both an aggrieved defendant and other members of his race of the perception that he has received equal treatment at the bar of justice. Such discrimination thereby undermines the judicial process.

Justice Mitchell, joined by Justice Whichard, concurred, stating: “The intent of the people of North Carolina was to guarantee absolutely unto themselves that in all cases their system of justice would be free of both the reality and the appearance of racism . . . and other forms of discrimination” *Id.* at 310.

The Court also quoted with approval the United States Supreme Court opinion in *Rose v. Mitchell*, 443 U.S. 545, 61 L. Ed. 2d 739 (1979):

Discrimination on the basis of race, odious in all respects, is especially pernicious in the administration of justice [S]uch discrimination ‘not only violates our Constitution and the laws enacted under it but is at war with our basic concepts of a democratic society and representative government.’ (quoting *Smith v. Texas*, 311 U.S. 128, 130, 85 L. Ed. 2d 84 (1940)).

These timely and eloquent words notwithstanding, for much of its history the Supreme Court of North Carolina has functioned in a society characterized by extensive discrimination on the irrational basis of race. It as an institution, and many of its members in both their juristic and individual capacities, have been active participants in the racially discriminatory policies and practices of that society. The Court may wish, by a method of its choosing, to formally condemn and repudiate that aspect of its history; and to commit itself and its members to the fullest extent its jurisdiction allows, to policies and practices that promote a fully inclusive society, in which no one is discriminated against on the basis of an irrational factor such as race, and everyone, with no irrational exceptions, has opportunity.